## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CHERYL POST	)	
Claimant	)	
VS.	)	
	) Docket No. 2	250,507
ARK CITY CLINIC, P.A.	)	
Respondent	)	
AND	)	
	)	
HARTFORD ACCIDENT & INDEMNITY	)	
Insurance Carrier	)	

## <u>ORDER</u>

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge John D. Clark on February 28, 2000.

## ISSUES

Claimant appeals from the finding by the ALJ that she has not sustained her burden of proving that she sustained a work-related injury.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

Claimant testified she injured her back when she was shoved during a dispute with a coworker. The claimant and coworker give different explanations of origin of the dispute but in either case the dispute arose from the work, work assignments, and how a problem with work assignments had been handled. The dispute was not imported from relations outside or away from work. The parties also disagree about who instigated the dispute. But an injury from the dispute would be compensable even if claimant initiated the dispute. Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 704 P.2d 394, rev. denied 238 Kan. 878 (1985).

The record also contains evidence that indicates claimant was not injured in this dispute with the coworker. The coworker testified that she did not push, shove, or strike the

claimant. She barely touched her as she moved past claimant to get away from the claimant. The record contains other evidence that challenges claimant's credibility. The ALJ observed the testimony of claimant and the coworker. He believed the coworker. The Board gives some deference to the ALJ's evaluation of credibility for witnesses who testify before the ALJ. After reviewing the evidence and giving some deference to the ALJ's determination on credibility, the Board concludes the ALJ's Order should be affirmed. The Board finds claimant was not injured in this dispute and therefore has not proven she suffered injury that arose out of and in the course of employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on February 28, 2000, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.	
Dated this day of A	April 2000.
	BOARD MEMBER

c: Michael Snider, Wichita, KS Larry D. Shoaf, Wichita, KS John D. Clark, Administrative Law Judge Philip S. Harness, Director